

RECENT DEVELOPMENTS IN RTAS / FTAS CONTAINING ENVIRONMENTAL PROVISIONS

This note summarises recent developments in RTAs containing environmental provisions -- with a focus on those where at least one party is from the Americas. It is designed to update two earlier documents prepared for the OECD Joint Working Party on Trade and Environment: the 2007 publication, *Environment and Regional Trade Agreements* and OECD Trade and Environment Working Paper No 2008-02, both posted on this website.

This summary has been prepared by the OECD Secretariat for the Santiago workshop as background information. While every attempt has been made to be accurate, the synthetic nature of the entries necessarily means that it has been necessary to make a certain number of choices.

Some background resources:

The WTO maintains [a list of RTAs](#) that have been notified to the Organisation. OAS has two relevant websites: that of **SICE** covers a wide range of RTAs in which countries from the Americas are involved. The **OAS Department of Sustainable Development** maintains a data base, found at following [link](#). This data base summarises environmental provisions in RTAs and FTAs of which a country in the AMERICAS is a signatory.

The **APEC** maintains [a website](#) with links to all the RTAs and FTAs currently in force, under negotiation or discussion that have one or more APEC members as a party. From the Americas, Canada, US, Mexico, Peru and Chile are APEC Members.

National trade ministries often maintain a website covering their RTAs. Here are a few:

[Australia](#)

[Canada](#)

[Chile](#)

[European Union](#) (DG TRADE)

[Japan](#)

[Mexico](#)

[Peru](#)

[USTR website](#)

CANADA

In 2008 Canada signed two free-trade agreements (with Peru and EFTA) and concluded negotiations on another two (Colombia and Jordan).

In the **Canada-Peru** FTA, references to environment can be found in the Preamble and the Chapters on Initial Provisions and General Definitions; Technical Barriers to Trade; Investment; Financial Services; Government Procurement; Dispute Settlement and Exceptions. Chapter 17 is wholly dedicated to the environment. A complementary **side agreement** on the environment stipulates the signatories' commitments to promote measures concerning the environment; it also establishes a joint Committee on the Environment to ensure its implementation. Under the agreement, the parties seek to “enhance and enforce environmental laws and regulations”, “strengthen co-operation on environmental matters”, and “promote sustainable development”. The agreement on the environment commits the Parties, *inter alia*, to ensure availability of judicial, quasi-judicial or administrative proceedings for sanctioning and remedying violations of environmental laws, enhance public awareness of, and compliance with, environmental laws and policies, promote and protect biological diversity, encourage best practices of corporate social responsibility, and pursue greater environmental cooperation. Progress on the implementation of the agreement is reviewed by a Committee on the Environment. There is also a dispute solution mechanism allowing the Parties to address any matter arising under the agreement up to the ministerial level.

Priority areas in the work programme include, “environmental risk management; integrated water management; conservation *in situ* and *ex situ* of biodiversity; sustainable use of natural resources; restoration of degraded ecosystems; promotion of production and trade in environmental-friendly goods and services; air, soil and waters pollution prevention management and control; integrated solid-waste management; integrated chemical contaminants and hazardous wastes management; systematizing of environmental information; environmental citizenship and education; national institutional strengthening; harmonization and rationalization of the knowledge and information management; forests management; and use and development of clean technologies.”

The **Canada-Jordan** and **Canada-Colombia** Environment Agreements reaffirm the Parties' commitments to MEAs and provide for specific MEAs to prevail in the event of an inconsistency between an FTA obligation and the obligations in the MEAs. On dispute resolution, **Canada-Colombia** provides for recourse to consultation at the ministerial level if matters cannot be resolved through their respective National Coordinating Officers. In the **Canada-Jordan** Agreement provisions allow for convening an Independent Review Panel if a matter cannot be resolved at ministerial level.

The Preamble of the **Canada-EFTA** FTA, recognises the need for aligning trade and environmental policies. Chapter 6 also incorporates GATT Article XX exceptions.

Summary Table for Canada: selected recent RTAs with environmental provisions

with	Date of signature	Type of agreement	Environmental Provisions
Peru	May 2008	FTA	In The Preamble , Chapter I , Chapter VI , Chapter VIII , Chapter XI , Chapter XIV , Chapter XVII is wholly dedicated to the environment. Chapter XXI , Chapter XXII The side-agreement on the environment
Colombia	not yet signed	FTA Negotiations Concluded 6/08;	A side-agreement on the environment has also been agreed. Official texts not yet available. Fact sheet available
Jordan	not yet signed	FTA Negotiations Concluded 8/08	A side-agreement on the environment has also been agreed. Official texts are not yet available. Fact sheet available
EFTA	Jan 2008	FTA	In the Preamble, Chapter VI (Exceptions); Article 22

CHILE

In the mid-90's, Chile began a policy designed to incorporate environment provisions into trade agreements. The scope and depth of these provisions vary significantly. The Agreements with Canada, the US and the Trans-Pacific Strategic Economic Partnership Agreement (P4)*, incorporate the most comprehensive environment provisions, and include chapters and/or side agreements on environmental cooperation. Key environmental provisions of recently signed agreements include:

Chile - China FTA: The agreement incorporates environmental provisions in the Preamble where the parties recognise the importance of pursuing sustainable development and environmental protection. Article 108 states that the parties agree to enhance their communication and cooperation on labour, social security and environment through both the Memorandum of Understanding on Labour and Social Security Cooperation, and the Environmental Cooperation Agreement. In September 2007, the National Commission on the Environment of Chile (CONAMA) and the State Environmental Protection Administration of China (SEPA) signed an MOU on Environmental Cooperation, which seeks to promote cooperation in the field of environmental protection on the basis of equality and mutual benefit (see the press release in Spanish [here](#)).

Trans-Pacific Strategic Economic Partnership Agreement (P4) between Chile, New Zealand, Singapore and Brunei Darussalam makes reference to environment in the Preamble, in the same manner as the aforementioned agreements. Article 19.1 (General Exceptions) specifically refers to environmental measures by incorporating GATT Article XX(b) and (g) and GATS Article XIV(b). The parallel **Environment Cooperation Agreement** aims to encourage sound environmental policies and improve capacities to better address environmental matters through cooperation and dialogue. In support of these objectives, they reaffirm their intention to pursue high levels of environmental protection and to fulfil their respective multilateral environmental commitments; and recognise that it is inappropriate to set or use their environmental laws, regulations and practices for trade protectionist purposes or to encourage trade or investment by relaxing or failing to enforce such laws. The Parties agree as well to cooperate on mutually agreed environmental issues; encourage and facilitate collaborative research; and exchange information and environmental experts.

In Latin America, Chile has recently signed agreements incorporating environment provisions with Panamá, Colombia and Peru. In **Peru** these are incorporated in the Preamble and Chapters 11 (Investment), 10 (Technical Rules), and 17 (Exceptions). The FTA with **Panama** incorporates environmental provisions in a Side Agreement, very similar to the P4-ECA; while the **Chile-Colombia FTA** incorporates a specific Chapter on environment with similar provisions.

Summary Table for Chile: selected recent RTAs with environmental provisions

with	Date of entry into force	Type of agreement	Environmental Provisions
China	01/10/2006	FTA	FTA: In the Preamble; Chapter XIII - Article 108 (Labour, Social Security and Environmental Cooperation); Chapter XII- Exceptions Side Agreement: Environmental Cooperation MoU between CONAMA and SEPA
P4(*)	08/11/2006 (for Chile)	Strategic Economic Partnership	Strategic Economic Partnership: In the Preamble; Chapter 16 - Strategic Partnership, Art. 16.10 (Cooperation with Non-Parties); Chapter 11- Government Procurement ; Chapter 19 - General Exceptions; Chapter 8 - Technical Barriers to Trade Side Agreement: Environment Cooperation Agreement
Panamá	07/03/2008	FTA	FTA: In the Preamble Side Agreement: Environment Cooperation Agreement
Perú	Signed: 8/2006	FTA	FTA: Preamble; Chapters 10 Technical Rules; 11 Investment; & 17 - Exceptions
Colombia	Signed: 11/2006	FTA	FTA: Preamble, Chapter 18 - Environment; Chapter 9: Investment
Australia	Signed: 07/2008	FTA	FTA: Preamble; Chapter 18 - Cooperation , article 18.2 (Scope)

EUROPEAN UNION

As part of a series of Free Trade (as well as Association and Partnership) Agreements that the EU started negotiating since the launch of the “Global Europe” strategy in 2006, more emphasis has been placed on sustainable development and the environment, be it vis-à-vis its negotiating partners in Asia, Latin-America, the wider-Europe, as well as in the ACP countries.

Within Latin-America, one example is the Economic Partnership Agreement (EPA) recently concluded with CARIFORUM. This Agreement makes reference to environment in several chapters. Chapter 4 of TITLE IV of the Agreement is devoted to the environment and stipulates the parties’ resolution to “conserve, protect and improve the environment” and to promote trade in environmental technologies, renewable- and energy-efficient goods and services. The parties also agree to adopt and implement internationally recognized environmental standards, guidelines or recommendations in the absence of relevant environmental standards at the national level. Under Article 232 of the Agreement a CARIFORUM-EC Consultative Committee on environmental issues is established and is responsible for monitoring the implementation of environmental provisions contained in the Agreement. The Committee is entitled to make recommendations to any of the parties to the Agreement.

At the same time, negotiations aimed at concluding wide-ranging bi-regional Association Agreements (including a Free Trade Agreement) between the EU and the Andean Community as well as between the EU and Central-America are under way since mid 2007, with trade & sustainable development/environmental issues constituting an important part of the talks. Also, since 2000 (i.e. well before the launch of the "Global Europe" Strategy), the EU and Mercosur have been in the process of negotiating an Association Agreement. An example of an "older" agreement between the EU and a Latin-American country is the EU-Mexico Economic Partnership, Political Coordination and Cooperation Agreement, which entered into force in 2000. This Agreement has environmental provisions in several chapters. Article 34 of the Agreement promotes cooperation between the parties on the environment and natural resources. One sub-clause, for example, stipulates, “the Parties undertake to develop cooperation to prevent degradation of the environment; to promote the conservation and sustainable management of natural resources; to develop, spread and exchange information and experience on environmental legislation, to stimulate the use of economic incentives to promote compliance; to strengthen environmental management at all levels of government; to promote the training of human resources, education in environmental topics and the execution of joint research projects; to develop channels for social participation.” The Agreement also encourages harmonisation of environmental rules and standards (Article 21). The EU-Chile Association Agreement, concluded in 2002, also contains a number of environment-related provisions.

The table below summarizes some of the examples referred to above.

with	Date of entry into force	Type of agreement	Environmental Provisions, if any
<u>Mexico</u>	01/07/2000	EPCA	In the Preamble, Article 21(Cooperation in agriculture and the rural sector), Article 23 (Cooperation on energy), Article 34 (Cooperation on the environment and natural resources)
<u>CARIFORUM</u>	Signed in late 2007. Ratification pending.	Economic Partnership Agreement (EPA)	In the Preamble, PART I (Trade Partnership for Sustainable Development) PART II (Trade and Trade-related Matters) / TITLE I (Trade in Goods) : CHAPTER 5 (Agriculture and Fisheries), CHAPTER 6 (Technical Barriers to Trade) TITEL II (Investment, Trade in Services and E-commerce) : CHAPTER 2 (Commercial Presence) TITEL III (Trade-related Issues) : CHAPTER 5 (Regulatory Framework) – Section 7 (Tourism Services) TITLE IV (Trade-related Issues) : CHAPTER 2 (Innovation and Intellectual Property) – Section 1 (Innovation), Section 2 (Intellectual Property), CHAPTER 4 (Environment)

The DG Trade website has an overview of [signed RTAs](#) and a [summary of on-going negotiations on RTAs](#).

MEXICO

Mexico has been an active negotiator of FTAs, several of which contain environmental provisions. Below is an indicative listing of some relevant provisions in FTAs Mexico has negotiated since 1999.

The Mexico-**Japan** EPA recognizes that it is inappropriate to encourage investment by relaxing domestic health, safety or environmental measures. The parties also agree to promote bilateral co-operation in the field of the environment through exchange of information, promotion of capacity and institutional building to foster activities related with the CDM, encouragement of trade and dissemination of environmentally sound goods and services and encouraging exchange of information for the identification of investment opportunities and the development of business alliances in the field of environment.

The Mexico-**Uruguay** FTA* exempts the ban on performance requirements (Art 13-07 on Investment) for measures requiring a particular technology to be used to comply with health, security or environmental requirements. Article 15-23 foresees the possibility for each party to exclude the patentability of inventions whose commercial use should be avoided in order to protect human, animal or plant life or health, or to avoid serious damage to nature or the environment.

The Mexico-**Northern Triangle** (El Salvador, Guatemala and Honduras) FTA*, the Parties agree to promote economic development in a manner which is compatible with the protection and conservation of the environment. Article 14-16, in the chapter on investment, stipulates that the Parties recognise that it is inappropriate to attract investment by relaxing domestic measures on health, security or the environment. Consequently, no Party may eliminate, or make a commitment to exempt from application to an investment or an investor, such measures as a means of attracting the establishment, acquisition, expansion or maintenance of an investment in its territory. In Article 15-03, Parties confirm their current rights and obligations vis-a-vis standardization measures arising from treaties on health, environment and conservation. Art. 15-19 addresses the management of hazardous substances and hazardous wastes. Article 16-25 allowing exclusions of Patentable Material is similar to Art. 15-23 of the FTA with Uruguay.

The Mexico-**EU** agreement also contains environmental provisions in several chapters, including Article 34 on co-operation on the environment and natural resources. The Parties undertake to develop co-operation to prevent degradation of the environment; to promote the conservation and sustainable management of natural resources; to develop, spread and exchange information and experience on environmental legislation, to stimulate the use of economic incentives to promote compliance; to strengthen environmental management at all levels of government; to promote the training of human resources, education in environmental topics and the execution of joint research projects; to develop channels for social participation.

In the Preamble to Mexico-**Chile*** Parties are to promote sustainable development. Art. 1-06 concerns the relationship with treaties on the environment and conservation. Art. 9-15, on Investment states that it is inappropriate to attract investment by relaxing domestic measures on health, security or the environment.

Summary Table: selected Mexican FTAs with environmental provisions

Other Party (ies)	Entry into force	Agreement type	Environmental Provisions
Japan	01/04/2005	EPA	Articles: 65 Performance Requirements; 74 Environmental Measures; 147 Co-operation, including on CDM.
Uruguay	15/07/2004	FTA	Articles 13-07 Investment; 15-23 Patentable material
EFTA	01/07/2001	FTA	Preamble
North. Triangle	01/06/2001	FTA	Preamble: env't protection, conservation & sustainable development
European Union	01/07/2000	FTA	Preamble; Articles 21 Co-operation in agric. & rural sector; 23 Co-operation on energy; 34 Co-operation on env't & natural resources
Chile	01/08/1999	FTA	Preamble; Chapters 1-Initial Provisions; 9 Investment; 19 Exceptions

**(English excerpts have been translated by the OECD Secretariat. The official texts are in Spanish.)*

NEW ZEALAND

Recent FTAs signed by New Zealand include those with Thailand, P4 partners (Chile, Singapore and Brunei) and China. The latter, the first RTA between an OECD member and China, recognizes in the Preamble the interdependence between economic development and environment and promotes co-operation on environmental aspects between the two countries inter alia on Technical Barriers to Trade. There is also a specific link between the FTA and the side instrument on trade and environment (Article 177). The parties also signed a separate Environment Co-operation Agreement in accordance with Chapter 14 (Co-operation) of the FTA. Both of these outcomes include all three of the core elements stipulated in the New Zealand Government's Framework on Integrating Environment Objectives in Trade Agreements. These elements are: shared principles on trade and environment (including the 'core' trade and environment principles); a mechanism and institutional arrangements for cooperation; and a consultation process to facilitate discussion and resolution of any issues arising between the Parties.

In relation to recent trade agreements involving countries from the Americas, the Trans-Pacific Strategic Economic Partnership Agreement (also known as the P4 agreement) includes Chile. The Parties to the TPSEP also negotiated an Environment Cooperation Agreement. As with the outcomes noted above, this is consistent with the New Zealand Government's Framework on Intergrating Environment Objectives in Trade Agreements noted above. Specifically, the outcome in P4 aims to encourage sound environmental policies and improve their capacities to better address environmental matters through cooperation and dialogue. In support of these objectives, they reaffirm their intention to pursue high levels of environmental protection and to fulfil their respective multilateral environmental commitments; and recognise that it is inappropriate to set or use their environmental laws, regulations and practices for trade protectionist purposes or to encourage trade or investment by relaxing or failing to enforce such laws. The Parties agree as well to cooperate on mutually agreed environmental issues; encourage and facilitate collaborative research; and exchange information and environmental experts. There is also provision for public consultation over matter relating to the operation of the Agreement.

Summary Table for New Zealand: selected recent RTAs with environmental provisions

Other Parties	Date of entry into force	Type of agreement	Environmental Provisions
China	Signed 07/04/2008 Entry into force of ECA 26 September 2008.	FTA	The Preamble, Chapter 8 (Technical Barriers to Trade) – Article 90 (Objectives), A Treaty-level Environment Co-operation Agreement was signed in conjunction with Article 177, Chapter 14 (Co-operation) of the FTA.
Thailand	01/07/2005	Closer Economic Partnership Agreement	The Preamble, Chapter 7 (Technical Barriers to Trade) – Article 7.3 (Scope & Obligations) A Side Arrangement on Environment between New Zealand and the Kingdom of Thailand.
P4: Trans-Pacific Strategic Economic Partnership Agreement (<i>Brunei-Darussalam, Chile, New Zealand and Singapore</i>)	May – August, 2006	FTA	In the Preamble; Chapter 16 - Strategic Partnership, Art. 16.10 (Cooperation with Non-Parties); Chapter 11- Government Procurement; Chapter 19 - General Exceptions; Chapter 8 - Technical Barriers to Trade A Treaty-level Environment Cooperation Agreement , Among the Parties to the TPSEP was negotiated as part of the P4 package, was signed concurrently with the FTA.

PERU

The Peru-US Trade Promotion Agreement was signed on 12/04/2006, subsequently ratified by the Peruvian Congress in June 2006, and the US-Peru TPA Implementation Act signed by the US President on 14/12/2007. This agreement was covered in OECD Trade and Environment Working Paper No 2008-02. A summary also appears on the OAS/dsd data base ([here](#)).

Peru signed a FTA with Singapore on 29 May 2008, in which the Investment Chapter recognizes necessary environmental measures as exceptions to the parties' performance requirements under the same chapter.

Summary Table for Peru

With	Date of entry into force	Type of agreement	Environmental Provisions
Singapore	Signed on 29/05/2008 Expected to enter into force early 2009	FTA	Ch.10 – Investment Ch.18 - Exceptions
The US	14/12/2007 enacted in the US	Trade Promotion Agreement	See The OAS website provides a summary - see here
Mexico	ECA expired on 30 June'08 FTA talk under way	Economic Complementation Agreement No.8	Texts (of the ECA) only available in Spanish. No specific reference to the environment (ambiente).
Chile			See Section above on Chile
Canada			See Section above on Canada

OTHER COUNTRIES IN THE AMERICAS

[El Salvador-Honduras-Taiwan FTA](#) was signed on 07/05/2007, and entered into force in 2008. The agreement makes reference to environment in Chapter 9 (Standardisation Measures, Metrology and Authorization Procedures).

UNITED STATES

Based on information available on the [USTR website](#), the recent development since late 2007 [time of the Update in COM/TAD/ENV/JWPTE/RD(2007)40] concerns ratification by the US Congress of the US-Peru Trade Promotion Act. The TPA Implementation Act will enter into force once Peru takes “the necessary steps to ensure implementation of its obligations”.

As set out in Box 2 of the earlier Update, the TPA contains a new feature RTAs/FTAs alongside other widely-adopted provisions on the environment. This Annex on Forest Sector Governance stipulates concrete steps to be taken by the Parties designed to improve forest sector governance and promote legal trade in timber products. Commitments made by the Parties include: increasing the number of personnel devoted to enforcing laws, regulations and other measures related to the harvest of, and trade in, timber products (Peru); introducing criminal and civil penalties to deter actions undermining sustainable management of forest resources (Peru); and capacity development for, *inter alia*, protection of wildlife and endangered species and promotion of clean production technologies (the US and Peru).